

DE 02-127

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of
Stranded Cost Recovery Charge and Transition Service Charge

Order Approving Stipulation and Settlement

O R D E R N O. 24,125

February 14, 2003

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by Kenneth Traum on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

On June 28, 2002, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a proposed reconciliation of the accounts associated with the Company's Stranded Cost Recovery Charge (SCRC) and Transition Service charge for the period from May 1, 2001 through December 31, 2001. These charges are integral to the PSNH Restructuring Settlement Agreement (Restructuring Settlement), which the Commission approved in Docket No. DE 99-099. *See PSNH Proposed Restructuring Settlement*, 85 NH PUC 154 (approving Restructuring Settlement); *on reh'g*, 85 NH PUC 536 and 85 NH PUC 645 (2000); *see also PSNH Proposed Restructuring Settlement*, 85 NH PUC 567 (2000) (resolving financing issues related to securitization of

stranded costs) and RSA 369-B (establishing legislative conditions for securitization financing).

The Restructuring Settlement divides PSNH's recoverable stranded costs into three parts - Part 1 consisting of amounts required to recover the costs associated with the Rate Reduction Bonds issued in connection with the securitization plan approved by the Legislature via RSA 369-B, Part 2 comprising nuclear decommissioning charges as well as costs associated with independent power producers in the PSNH service territory, and Part 3 consisting of all other recoverable stranded costs. Under the terms of the Restructuring Settlement, PSNH undertook some risk of not fully recovering the Part 3 stranded costs via the establishment of a Part 3 Recovery End Date and various provisions for the adjustment of that date in certain circumstances. The SCRC is the mechanism by which PSNH pays down these recoverable stranded costs with customer revenue.

Transition Service is "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive electricity supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. It will be available to PSNH's large commercial and industrial customers at least through February 1, 2005 and to

all other customers at least through February 1, 2006. See RSA 369-B:3, IV(b)(1)(B). During the proposed reconciliation period, PSNH provided Transition Service largely from a portfolio of PSNH-owned generation facilities and entitlements, a basic situation that will continue at least through February 1, 2004.¹ See 2001 N.H. Laws 29:13 (delaying divestiture of PSNH fossil and hydro generation assets until at least 33 months after Competition Day).

Transition Service charges and the SCRC are linked under the Restructuring Settlement. Specifically, the Restructuring Settlement permits PSNH to recover as a Part 3 stranded cost, or offset against Part 3 stranded costs, any difference between expenses incurred in supplying Transition Service and the revenue received via Transition Service charges. See Restructuring Settlement at lines 669-670. According to PSNH's filing, the reconciliation for the eight-month period, May 1, 2001 through December 31, 2001, resulted in a net

¹ There was, of course, a major change to that basic situation on November 1, 2002. On that date, pursuant to Order No. 24,050 (September 12, 2002), PSNH and an affiliate sold an entitlement to some of the output from the Seabrook nuclear power facility. Seabrook was part of the portfolio of PSNH-owned generation devoted to Transition Service during the reconciliation period applicable to this docket, but subsequent to the sale date PSNH will have to replace this capacity, if necessary to meet Transition Service obligations, with purchases on the regional electricity market. Pursuant to the Restructuring Settlement, the revenue from the sale of this entitlement was credited to Part 3 stranded costs.

reduction to Part 3 stranded costs of approximately \$5.7 million. Baumann Testimony, Attachment RAB-4, Page 2.

On August 7, 2002, the Commission entered an Order of Notice scheduling a Prehearing Conference, which took place on August 22, 2002. On August 9, 2002, the Office of Consumer Advocate (OCA) gave notice of its intent to participate in this docket on behalf of residential utility consumers pursuant to RSA 363:28, II. Prior to the Pre-Hearing Conference, the Commission received motions to intervene from the Governor's Office of Energy and Community Services (ECS) and Competitive Energy Services - New Hampshire, L.L.C. (CES). There were no objections to these motions, which were granted at the Pre-Hearing Conference. On August 28, 2002, the Commission received an intervention petition from the Robert E. McLaughlin Trust, which was granted on September 18, 2002 by Order No. 24,054. That order also approved the parties' recommendation with respect to a procedural schedule to govern the remainder of the docket.

Discovery ensued and the Commission Staff (Staff) submitted pre-filed direct testimony on November 22, 2002. Technical sessions and settlement conferences took place as scheduled on November 8, 2002 and December 17, 2002. On January

6, 2003, PSNH filed a proposed Stipulation and Settlement entered into among PSNH, OCA and Staff.

The Commission conducted a merits hearing on January 8, 2003 as scheduled. PSNH witnesses testified in support of the proposed Stipulation and Settlement Agreement. None of the intervenors previously granted party status appeared at the hearing.

II. SUMMARY OF STIPULATION AND SETTLEMENT

A. Filing of Yearly Reconciliation and Quarterly Reports

In its initial filing, PSNH requested a reconciliation of its Stranded Cost Recovery Charge and Transition Service Charge for the period commencing with May 1, 2001, and running through the last day of 2001. May 1, 2001 marks the so-called "Competition Day" under the Restructuring Settlement - i.e., the date on which the PSNH service territory was opened to competition among retail energy suppliers. Thus, the instant reconciliation provides the Commission with its first opportunity to reconcile recoverable stranded costs and Transition Service charges with actual collections.

The Restructuring Settlement requires PSNH to "compare the amount to be recovered through . . . the SCRC during each six-month period with the revenue received from the billing of

the SCRC." Restructuring Settlement (revised and confirmed edition dated September 22, 2000) at lines 699-701.

Nevertheless, PSNH requested an eight-month reconciliation in order to treat PSNH's stranded costs on a calendar year basis. For periods after the end of calendar 2001, the pre-filed direct testimony of PSNH witness Robert Baumann proposed an annual SCRC reconciliation proceeding. The Stipulation and Settlement Agreement adopts this aspect of PSNH's proposal and calls for PSNH to make preliminary quarterly filings on the 15th of May, August, November and February of each year comparing the stranded cost revenues received by PSNH with the stranded costs incurred by PSNH.

**B. Cost of Generation Used to
Supply Transition Service**

The majority of Transition Service is supplied by PSNH's generation assets. Therefore, the operation of those plants is relevant to the reconciliation of costs to revenues. The incurred costs of PSNH's generation assets and power purchase entitlements are included in Part 3 stranded costs while Transition Service revenues are credited as an offset to those costs. Staff Witness Chester Kokoszka recommended no disallowances for replacement power costs resulting from the outages at PSNH's hydroelectric and fossil-fired steam plants.

He also recommended no disallowances for replacement power costs at Vermont Yankee and Seabrook Station. PSNH and OCA agree that there is no basis for a disallowance during the reconciliation period at hand and ask the Commission to accept this recommendation.

C. FAS 109 - Business Profits Tax

PSNH included in its total stranded costs a regulatory asset created under Statement of Financial Accounting Standards No. 109 (FAS 109 regulatory asset) attributable to the change in the New Hampshire Business Profits Tax which occurred on May 1, 2001. On that date, the Franchise Tax was replaced by the Electricity Consumption Tax, and PSNH could no longer utilize the Franchise Tax as a deduction against the Business Profits Tax. Staff Witness Steven Mullen agreed with the creation of such a regulatory asset, but noted that it should not all be recovered through the SCRC. In his testimony, he recommended that the asset be segmented based upon the relationship between the functional elements of PSNH's rates (i.e., the delivery function and the generation function). Mr. Mullen recommended that \$7.9 million of the \$45.3 million FAS 109 regulatory asset be included in PSNH's next Delivery Charge rate case. This portion of the segmented regulatory asset is related to transmission and distribution functions, and those costs are to

be recovered through the Delivery Charge rather than the SCRC. PSNH and the OCA agree with this proposal and ask the Commission to accept this recommendation.

**D. Wyman Unit No. 4 Settlement
with Central Maine Power**

PSNH settled an arbitration matter with Central Maine Power Company related to Central Maine Power Company's sale of common facilities at Wyman Station in Maine to a subsidiary of Florida Power and Light. PSNH owns a minority share in Wyman Unit No. 4 and received a settlement amount of \$933,936. This amount was booked in September 2001 by PSNH as a below-the-line amount instead of a credit to stranded costs based on the fact that no specific provision had been made in the Restructuring Settlement to address the Wyman arbitration. On behalf of Staff, Mr. Mullen recommended that this settlement recovery be credited to Part 3 stranded costs as the transaction was related to the sale of generation assets. In November 2002, PSNH subsequently recorded it as a regulatory obligation offsetting non-securitized stranded costs, consistent with Staff testimony. PSNH and the OCA request that the Commission accept this recommendation by the Staff.

**E. Fuel & Purchased Power Adjustment
Clause Disallowance**

On December 31, 2002, the Commission issued Order No. 24,108 in Docket DE 01-150, approving the final reconciliation of fuel and purchased power adjustment clause (FPPAC) costs and revenues. In that Order, the Commission disallowed \$17,100 in replacement power costs that were previously deferred under FPPAC. The OCA has recommended that at the starting point of the SCRC reconciliation, May 1, 2001, FPPAC costs be reduced by \$17,100. Both PSNH and Staff agree with this proposal and request that the Commission approve this recommendation.

Although intervenor status had been granted to the Governor's Office of Energy and Community Services, The Robert E. McLaughlin Trust and Competitive Energy Services-New Hampshire, these entities took no active role in the technical sessions or settlement discussions.

III. COMMISSION ANALYSIS

The Restructuring Settlement established, among other things, a plan for unbundling PSNH's electricity rates to customers into various components, each with its particular contents and adjustment provisions. The SCRC, the subject of the present proceeding, is further divided into three unique "parts." Each "part" consists of different types of costs to be

collected over varying periods of time, pursuant to the guidelines set forth in the Restructuring Settlement. We deem it noteworthy that, in light of the number of potential conflicts that could arise in such a proceeding, the number of issues raised was relatively few and the parties involved were able to resolve those issues by agreement.

At hearing, PSNH witness Baumann explained that there were basically three approvals being sought: approval of the SCRC reconciliation, approval of the performance of PSNH's generating stations during the eight-month reconciliation period, and approval of the Stipulation and Settlement as filed. Tr. 1/8/03 at 10. Each of those subjects will be addressed through our discussion of the issues contained in the Stipulation and Settlement.

**A. Filing of Yearly Reconciliation
and Quarterly Reports**

As mentioned earlier, the Restructuring Settlement requires that PSNH compare the amounts to be recovered through the SCRC with the SCRC revenues at six-month intervals. The Restructuring Settlement does not contain any specific requirement regarding the filing by PSNH of any SCRC reconciliation reports with the Commission. Thus, any determination we make here as to the filing of reconciliation

reports would not amount to a change in the previously approved Restructuring Agreement.

At the time of the August 2, 1999 submission of the Restructuring Settlement in its original form, the parties to that agreement anticipated that Competition Day would take place on January 1, 2000. Had this occurred, the required SCRC comparisons of costs and revenues would have been performed after the months of June and December each year, coinciding with a calendar year timetable. After the lengthy proceedings in Docket No. DE 99-099 as well as in the Legislature, Competition Day for PSNH did not actually occur until May 1, 2001. We find that it was reasonable for PSNH to file this initial reconciliation for the eight-month period May 1, 2001 through December 31, 2001 as a means of reverting to the calendar year timetable.

For the near future, there is not expected to be any adjustment to the overall SCRC rate. Pursuant to the Restructuring Settlement,

[t]he overall average level of the SCRC will be 3.40 cents per kilowatt-hour for the period from Competition Day until the earlier of the date that the Non-Securitized Stranded Costs are fully amortized or the Recovery End Date described in Section V(C), the Risk Sharing section of this Agreement."

Restructuring Settlement at lines 696-699.²

The terms Non-Securitized Stranded Costs and Recovery End Date relate solely to Part 3 Stranded Costs. The Recovery End Date was originally estimated to be at October 31, 2007 and, according to PSNH witness Baumann, "is a variable date based on a variety of factors, and cannot be determined until PSNH sells its fossil and hydro-electric generating assets." Baumann testimony at 7. Additionally, Mr. Baumann stated that "we believe that PSNH will fully recover all of its part 3 non-securitized stranded costs sometime during 2005." *Id.* At 7. In light of all this, based on current information, the earliest point at which the SCRC rate would be adjusted is during 2005. From now until such time that Part 3 of the SCRC ceases to exist, we find it appropriate to require PSNH to make an annual reconciliation filing on May 1 of each year. Additionally, we approve the recommendation of the parties that, in addition to the annual reconciliation filing, PSNH shall make preliminary quarterly filings by the dates specified in the Stipulation and Settlement. We will address the frequency of reconciliation filings for the

² The capitalized items refer to defined terms in the Restructuring Settlement.

period subsequent to the cessation of Part 3 at an appropriate time in the future.

**B. Cost of Generation Used to
Supply Transition Service**

The New Hampshire Supreme Court has held that when a utility has incurred costs resulting from demonstrated inefficiency or waste, or action inimical to the public interest, those costs may not be passed on to ratepayers. *Appeal of Seacoast Anti-Pollution League*, 125 NH 708, 723 (1985). The Court established this prudence standard to guide the Commission in determining whether costs should be included or excluded for ratemaking purposes. Consequently, the Commission must determine whether PSNH conducted itself with the level of care expected of highly trained specialists with regard to the unplanned outages which occurred during the period from August 2, 1999 through April 30, 2001. *See Public Service Co. of N.H.*, 81 NH PUC 531, 541 (1996) (disallowing imprudently incurred expenses related to 1991 outage at Millstone nuclear power plant).

PSNH and Staff both provided testimony regarding generating plant outages and power reductions and the related replacement power purchases. In both cases, the testimony supported the manner in which the plants were operated as well

as the actions taken during the outages. Accordingly, we accept the determinations that PSNH acted prudently.

C. FAS 109 - Business Profits Tax

As discussed in the Stipulation and Settlement, changes to New Hampshire tax law, e.g., elimination of the Franchise Tax and implementation of the Electricity Consumption Tax, on May 1, 2001, created a situation whereby PSNH was subject to increased New Hampshire Business Profits Tax liability. The state's other electric utilities were also faced with the same situation. We have previously allowed those other electric utilities to record and recover the resulting regulatory asset over periods of time particular to the circumstances of the individual companies.³ Likewise, PSNH shall be allowed to recover \$37.4 million of the FAS 109 regulatory asset related to the New Hampshire Business Profits Tax as a Part 3 stranded cost. As the remaining \$7.9 million relates to PSNH's transmission and distribution assets, we agree with the parties that it is appropriate for that amount to be included for consideration in PSNH's next Delivery Charge rate case.

³ See Order Nos. 23,745, 23,746 and 23,747 dated July 26, 2001 in dockets DE 01-096, DE 01-097 and DE 01-098, respectively.

**D. Wyman Unit No. 4 Settlement
with Central Maine Power**

We are pleased to see that the Stipulation and Settlement provides an additional \$933,936 as an offset to Part 3 stranded costs, an issue not addressed in PSNH's original filing. We find that inclusion of the offset to Part 3 stranded costs is consistent with the terms of the Restructuring Settlement. Specifically, the Restructuring Settlement states that the balance of the Part 3 stranded costs will be reduced by "[t]he net proceeds . . . from the sales of PSNH's fossil and hydro assets." Restructuring Settlement at lines 629-634. Thus, we accept the recommendation to include the \$933,936 Wyman settlement as a reduction to Part 3 stranded costs.

**E. Fuel and Purchased Power
Adjustment Clause Disallowance**

As described in the Stipulation and Settlement, in Order No. 24,108 in Docket No. DE 01-150 we disallowed \$17,100 of replacement power costs that were previously deferred under PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC). Consistent with the Restructuring Settlement, deferred FPPAC costs are one of the categories of costs included as a Part 3 Non-Securitized Stranded Cost. Restructuring Settlement at line 623. Considering that the final FPPAC period ended on April 30, 2001, the logical progression of events is for PSNH to reduce

the balance of deferred FPPAC costs by \$17,100 as of May 1, 2001. Hence, we adopt the recommendation of the parties on this issue.

In summary, we approve PSNH's SCRC reconciliation filing for the period May 1, 2001 through December 31, 2001 as adjusted for the specific items contained in the Stipulation and Settlement and described herein. We also find that PSNH's generating stations were operated in a prudent manner and we will allow PSNH to recover all replacement power costs associated with the eight-month reconciliation period.

Based upon the foregoing, it is hereby

ORDERED, that the Stipulation and Settlement discussed above and entered into by the Parties and Staff is hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of February, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary